

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 146

48th Legislature, 2nd Session, 2008

Short Title: Public School Capital Outlay Omnibus Bill

Sponsor(s): Senators Cynthia Nava and Mary Jane M. García

Analyst: Peter van Moorsel

Date: January 29, 2008 (revised)

**FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

Bill Summary:

SB 146 contains the recommendations of the Public School Capital Outlay Oversight Task Force (PSCOOTF) resulting from their annual review of the standards-based process for making grants to public schools for capital improvements; and the task force's oversight of the efforts of the Public School Capital Outlay Council (PSCOC) to bring public school facilities throughout the state up to an acceptable level. Substantive provisions are detailed in the following sections:

Section 1 - Creates a new section of the *Public School Capital Outlay Act* to create the Public School Facility Opportunity Fund to make grants so that the facilities of qualifying school districts may exceed adequacy standards. A school district may apply for a grant from the Public School Facility Opportunity Fund if the PSCOC determines that:

- the project is included in the school district's five-year facilities plan and the district meets all qualifications to apply for a grant pursuant to the *Public School Capital Outlay Act*;
- the state share for existing grants is 70 percent or greater;
- averaged over the previous four property tax years, the district has a total aggregate residential (property) tax rate of at least nine mills;
- at least 70 percent of the students in the district are eligible for free or reduced-fee lunch;
- for the next four years the district will have no available resources to exceed the PSCOC adequacy standards;
- the local community does not have adequate infrastructure to compensate for the school district's lack of resources; and
- the planned use of the additional funds will enhance public school education within the district, will further the school district's educational plan for student success, and is considered a prudent use of state funds.

Section 2 - Amends the *Public School Capital Outlay Act* to allow the Public School Facilities Authority (PSFA) to make payments to agencies such as the Construction Industries Division and the State Fire Marshall's Office for the costs associated with permitting and inspecting projects funded in whole or in part by the PSCOC to be made before such inspections take place.

Section 3 - Amends the *Public School Capital Outlay Act* to reduce the offset to a PSCOC grant award resulting from a direct legislative capital outlay appropriation if the direct appropriation has been made for a capital project that will be jointly used by the school district and another

governmental entity. The PSCOC may reduce the total amount subject to the offset based upon the proportionate use of the facility by the other governmental entity. (Current law requires the PSCOC to reduce any grant amounts awarded to a school district by a percentage of all direct non-operational legislative appropriations for schools in that district that have been accepted, including educational technology and reauthorizations of previous appropriations. The percentage by which the awards are offset is equal to the local match percentage for grant awards.)

Section 3 also amends the *Public School Capital Outlay Act* to provide for a 5.0 percent increase in the state share of a PSCOC grant award to a school district if the PSCOC finds that the district has been exemplary in implementing and maintaining a preventive maintenance program.

Section 5 - Creates a new section of the *Public School Capital Outlay Act* to require that districts that receive a grant award from the Public School Capital Outlay Fund and meet certain criteria receive an additional grant. These additional grants are intended for school districts that are otherwise unable to generate the funds needed to fund a facility above adequacy. The criteria for qualification for an additional grant authorized in this section are the same criteria used for grants from the Public School Facility Opportunity Fund created in Section 1.

The amount of the additional grant would be the total project cost multiplied by the lesser of:

- the state share for public school capital outlay projects minus six-tenths; or
- 25 percent. (Pursuant to the eligibility criteria for additional grants, the amount of the additional awards can range between 10 percent and 25 percent of total project cost.)

Section 6 - Amends the *Public School Capital Outlay Act* to remove the “State Investment Officer or the State Investment Officer’s designee” from the list of members of the PSCOOTF.

Section 8 - Amends the *Public School Capital Improvements Act* (SB 9 or 2 mill levy) to exempt the additional mill authorized in Section 9 from the SB 9 state guarantee.

Section 9 - Creates a new section of the *Public School Capital Improvements Act* to authorize school districts to request voter approval for an additional mill levy. Section 8 exempts this additional mill from the state match guarantee. (Current law allows local school boards to request voter approval for the imposition of up to two mills; and the state provides the school districts with minimum level of matching funds. This “program guarantee” is calculated by multiplying the district’s 40th day total program units by a set dollar amount (\$70 in FY 08). If the local revenue generated by the two-mill levy is less than the program guarantee, the state provides matching funds to make up the difference.)

Section 10 - Provides that an amount equal to the lesser of \$18.0 million or 30 percent of the net receipts of the Indian gaming compact revenues during the immediately preceding fiscal year be transferred from the General Fund to the Public School Facility Opportunity Fund (see Section 1 and Section 5) on July 15 of 2009, 2010, and 2011.

Section 11 - Reauthorizes the expenditure of the FY 07 appropriation of \$2.5 million from the Public School Capital Outlay Fund to the PSFA through FY 09. The appropriation is to continue to develop and implement the Facilities Information Management System (FIMS).

Fiscal Impact:

- The revenue source for the Public School Facility Opportunity Fund provided for in Section 10 would be an expense to the General Fund of up to \$18.0 million in FY 10 through FY 12; and
- PED estimates that if every school district were to impose the additional mill authorized in Section 9 of SB 146, school districts would generate approximately \$49.0 million additional dollars. The additional mill would not affect the formula for calculating the state match.

Issues:

Public School Facility Opportunity Fund (Sections 1, 10)

- During the 2006 interim, and again during the 2007 interim, the PSCOOTF discussed the creation of the Public School Facility Opportunity Fund to fund selected school districts above adequacy. The task force determined that the special conditions faced by school districts that meet certain criteria made it unlikely that these districts would ever have the capability for generating the funds needed to fund a facility above adequacy. As a result, the task force endorsed legislation to create the Public School Facility Opportunity Fund.
- The 2007 Legislature passed legislation creating the Public School Facility Opportunity Fund; however, the language creating the fund was line-item vetoed by the Governor, due to concerns over funding sources and providing funds to selected districts outside of the standards-based capital outlay process. In his veto message, the Governor requested that the PSCOOTF perform further study of the issue.

According to the Legislative Council Service (LCS), under the current eligibility criteria, 10 school districts would qualify for grants from the opportunity fund. They are Cuba Independent Schools, Gadsden Independent Schools, Gallup-McKinley County Public Schools, Grants-Cibola County Schools, Hagerman Municipal Schools, Hatch Valley Public Schools, West Las Vegas Public Schools, Tucumcari Public Schools, Tularosa Municipal Schools, and Zuni Public Schools.

- In a November 2007 presentation to the PSCOOTF, the Department of Finance and Administration (DFA) described several areas of concern regarding the Public School Facility Opportunity Fund. DFA was particularly concerned with potential disequalizing effects that the fund may have on the current standards-based award system of capital funding. DFA also questioned the equity of the criteria that determine eligibility for grants from the fund, noting that schools that are not eligible for funding potentially face the same facility needs as the eligible schools. Finally, DFA questioned whether a more equitable means toward achieving the goals of the opportunity fund would be to redefine adequacy standards for all schools, and to continue making capital outlay awards using the established standards-based process.

Preventative Maintenance Program (Section 3)

- The PSCOC and the PSFA place great importance on district master planning and on maintenance as a means of safeguarding the state's capital investment, and of increasing the life-span of the facilities that the Legislature has funded. A major tool in improving facility

maintenance is the FIMS, which allows school districts to track utility usage and schedule preventative maintenance.

- According to PSFA, many districts have improved their maintenance programs and thus extended the service life of their building systems and equipment through the use of school facility preventive maintenance; and in some cases, district investment in the improvement of the district's facilities has resulted in a lower NMCI ranking for those facilities, thus delaying their eligibility for standards-based capital outlay funding. To promote continued district maintenance program improvements, districts that significantly extend the service life of their building systems, as measured in the state's Facility Assessment Database (FAD) and verified through facility inspections, would earn a larger state match when their school buildings eventually become eligible for standards-based capital funding. The amount of the adjustment, not to exceed 5.0 percent, would be based on the number of years that the life of the combined building systems had been extended.

Joint Use of Public School Facilities (Section 3)

- During the 2007 interim, the PSCOOTF discussed the benefit of joint use of public school facilities by the school district and municipal and county governments. PSFA states that by agreeing to share playing fields, libraries, classrooms, community centers, many of the social and recreational needs of the community can be met without duplication. PSFA also notes the potential economies of scale faced by both the district and its community by combining resources. According to PSFA, the joint use of public facilities can be particular beneficial to smaller and rural communities, where local governments do not have the resources to construct separate community centers. The PSFA analysis of SB 146 identifies several school districts that have partnered with others to maintain, construct, or share spaces, including the following examples:
 - Grady Municipal Schools, Floyd Municipal Schools, and San Jon Municipal Schools all allow public use of their school gyms;
 - Zuni Public Schools allow public use of their school swimming pool;
 - Santa Fe Public School opens school gyms to city recreational basketball leagues; and
 - Hagerman Municipal Schools has a joint-use agreement with the town of Hagerman for the public to use classroom space, gym, and sports fields.

Related Bills:

HB 19 *Insurance for Private Use of Public Schools*

HB 117 *Charter School Authority Transfers*

HB 173 *Public Works Subcontractor Bonding*